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LETTER DATED 2 JANUARY 1996 FROM THE CHARGE D'AFFAIRES A.I. OF THE PERMANENT MISSION OF YEMEN TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I would like to enclose herewith a letter in Arabic, which was sent from H.E. Deputy Prime Minister and Minister for Foreign Affairs of the Republic of Yemen, Dr. Abdulkarim Al-Eryani to H.E. Salem Ahmed Salem, Secretary General of the Organization of African Unity, concerning the Eritrean military aggression against the Yemeni Island of Hanish Alkubra, requesting that this letter be circulated as a document of the Security Council.

(Signed) Hamed Mohamed OBADI
Ambassador
Deputy Permanent Representative
Chargé d'affaires a.i.

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Annex

[Original: Arabic]

Letter dated 24 December 1995 from the Deputy Prime Minister and Minister for Foreign Affairs of Yemen addressed to the Secretary-General of the Organization of African Unity (OAU)

You will no doubt have followed the deplorable acts of aggression committed by the neighbouring State of Eritrea, a member of your esteemed organization, against the sovereignty and territorial integrity of my country, the Republic of Yemen, since Friday 15 December. The armed forces of Eritrea carried out an armed attack on the Yemeni island of Hanish al-Kubra, resulting in occupation of the Yemeni island, capture of 186 Yemeni soldiers and the death of all other members of the island's Yemeni garrison.

My country feels bound to inform you of certain facts which preceded and accompanied this flagrant aggression committed by a State member of your esteemed organization, ignoring thus the gravity and consequences of its action against a neighbouring State which has been and continues to be linked to it by historically solid good-neighbourly relations.

The Eritrean Government forces began their harassment of the Yemeni garrison on 11 November 1995 when they delivered a written warning in a manner entirely incompatible with that prescribed for the conduct of relations between States. Asserting that the island belonged to Eritrea, they demanded the withdrawal from the island both of the garrison, which at that time comprised no more than 20 soldiers, and of a commercial investor constructing tourist diving facilities under a permit granted to him by my country's Government. The permit concerned was one of several issued to other investors for similar investment projects on other Yemeni islands in the context of plans to harness the islands' resources for the purely economic purposes of developing tourism in Yemen.

On 12 November 1995 my country's Government protested against the manner in which the Eritrean Government had addressed the Government of a friendly, and indeed fraternal, State, constituting as it did a direct provocation against the Republic of Yemen at a time when both countries were represented by Ambassadors in each other's capitals. However, instead of explaining its claims and assertions through appropriate diplomatic channels, the Eritrean Government met the Yemeni protest - which was marked by the utmost self-restraint, politeness and adherence to the principle of good-neighbourliness - with a demand that Yemen withdraw from Hanish island, on the grounds that it belonged to Eritrea, and negotiate with Eritrea if it laid claim to sovereignty. Although we are aware that every nation is entitled to claim whatever it wishes, this Eritrean demand is an offence against recognized and established procedures for the conduct of international relations.

There are a number of Ottoman and British documents which mention the islands, indicating that the Ottomans and the British had a presence there. In the early 1970s, during the reign of Emperor Haile Selassie, a number of delegations were dispatched when it was rumoured that the Israelis were

maintaining a presence on some islands. During the 1973 war between Egypt and Israel, Yemen allowed Egypt to use the Yemeni islands, including Hanish al-Kubra, in response to an Egyptian request. Egypt did not address its request to Ethiopia, which at that time exercised sovereignty over Eritrean territory. Nor did the Ethiopian Government protest or raise any objection to the Yemeni Government's decision. Yemen (at that time the Yemen Arab Republic) and Egypt signed an agreement to that effect on 12 May 1973.

- Directly after Eritrea attained its independence, the Yemeni Government informed the Eritrean Government of its wish to determine the maritime boundary between the two countries by means of negotiation. However, we received no positive reply, on the grounds that the Eritrean Government had other priorities.

- Yemen does not agree that it should be asked to leave the island simply because the Eritrean side believes Yemen is mistaken in exercising its sovereignty there. It maintains a presence on the island by virtue of its natural right of sovereignty and is not seeking, as the Eritrean side asserts, to impose a status quo.

- Yemen suggests that, instead of a piecemeal approach and rather than determining sovereignty over any island, the two countries should consider means and mechanisms for negotiating the entire maritime boundary between them in accordance with the principles of international law, the Convention on the Law of the Sea and the Charter of the United Nations, because the issue relates to the maritime boundary rather than to sovereignty over any island or islands. This process should be completed within a maximum period of 60 days, during which legal experts would formulate their ideas for a solution, to be followed by negotiation. If the two parties did not reach a satisfactory solution, the countries would refer the issue to the various recognized international arbitration bodies.

- The use of language asserting the right of one party but denying it to the other or speaking of illegal or illegitimate action by a party will make any solution impossible.

The Eritrean Minister for Foreign Affairs made the following points on behalf of his country:

- His country had been surprised by the Yemeni presence on the island and the establishment of tourist facilities there. Such actions were not conducive to the consultation of documents and references. Besides, his country lacked adequate legal and administrative expertise. He said he had no knowledge of the previous Yemeni request to determine the maritime boundary between the two countries.

- Yemen should have informed them of its intentions and resolved the issue before installing a military garrison and constructing facilities on the island. Yemen should have duly informed his country and requested that the matter be discussed.

- What Yemen had done was to go to an island where it had no presence, without informing Eritrea of its intentions to create a new status quo for use by Yemen in demanding a solution of the resulting dispute. He said the Eritreans had used that and other islands for their resistance against the Ethiopians.

- Eritrea believed that Hanish island belonged to Eritrea. It demanded restoration of the situation pertaining three months previously, whereupon negotiation could begin.

The response was that the Eritrean side's assertions were unacceptable, encroaching as they did on Yemen's sovereignty over the island. At the same time, the assertions confirm that the island belongs to Yemen because the Eritreans were using it as a base, with the consent of the Yemeni Government, when Yemen gave support to the Eritreans in their liberation struggle. If the island had been subject to Ethiopia's sovereignty, neither Emperor Haile Selassie nor the former Ethiopian ruler Mengistu Haile Mariam would have left them alone for one moment, particularly since Ethiopia had the strongest naval force in the Red Sea. In addition, if the territory had belonged to Eritrea, they would have declared it to be liberated as they did for other territory under their control.

In response to the request that we withdraw from the island, we affirmed that Yemen would hold fast to its rights of sovereignty and rejected the Eritrean demand, which, if complied with, would sanction Eritrea's assertions of a stronger claim to sovereignty over the island. When the Eritrean side became more intransigent in its refusal to accept the Yemeni position, we repeated all the aforementioned points in accordance with our conviction that it is important to use legitimate means for the peaceful settlement of disputes and to observe the established rules of international relations and international law.

However, it was clear that the Eritreans had not come to Sana'a for dialogue to identify an amicable solution to their claims. Their only mandate was to put forward the demand for Yemen's withdrawal from Yemeni territory which they believed belonged to them. Alternatively, they had not been authorized to enter into any negotiations concerning the maritime boundary. We nevertheless stressed the importance of the two sides' agreeing on a prompt resumption of negotiations. The Eritrean delegation was not able to fix any date.

Yemen kept up its contacts with the Eritrean Government at the highest possible level, in the hope of achieving a peaceful settlement of the dispute and maintaining the thus far excellent relations between the two countries. The Yemeni Ambassador transmitted a letter from the President, Lieutenant-General Ali Abdullah Saleh, to the Eritrean President, Mr. Isaias Afwerki, on 27 November 1995. He received a letter of reply dated 5 December 1995 in which President Isaias Afwerki invited us, at the head of a Yemeni delegation, to Asmara on Thursday, 7 December 1995, to resume the talks initiated at Sana'a.

At Asmara we were astonished to find that the Eritreans broadened the scope of the problem by asserting claims to sovereignty over all the Yemeni islands from Jabal al-Tayr to south of Hanish al-Kubra. They suggested that the case be referred to the International Court of Justice for a ruling on sovereignty and

ownership of the islands, presenting us with a draft agreement for that purpose. Our reponse to this new position was to reject as a matter of principle the claims laid by the Eritrean Government to the Yemeni islands in its draft, while affirming that we did not reject in principle a referral to the International Court of Justice if all the other peaceful means prescribed in the Charter of the United Nations and the principles of international law relating to the peaceful settlement of disputes between States had been exhausted. We also emphasized that the essence of the problem lay in the need to determine the entire maritime boundary between the two nations: a decision on that issue would inevitably eventually settle the question of sovereignty and rights over all the Red Sea islands. We presented a detailed proposal for that purpose to the Eritrean Government, in accordance with a mechanism to be agreed upon and based on a timetable not exceeding one year, after which recourse should be had to other means for the settlement of disputes, including the International Court of Justice.

However, the Eritrean side held fast to its proposals, insisting on immediate recourse to the International Court of Justice to determine sovereignty and ownership of the islands, determination of the rest of the maritime boundary being postponed until the necessary expertise was available to it concerning the Law of the Sea. The Eritreans made it clear in advance that the two countries would not reach an agreement by negotiation: their country was not a party to the United Nations Convention on the Law of the Sea until it acceded to that Convention. We explained, however, that Eritrea was a successor State to Ethiopia, which had signed the Convention, and that the Convention was simply the codification of proven, recognized and established rules in international law covering the sea and what lay in it.

Clearly, the essential difference related to the nature of the dispute and whether it revolved around determination of the maritime boundary or sovereignty and ownership of the islands. That being so, the two sides agreed to meet in late February, due to prior commitments on the Yemeni side as well as the holy month of Ramadan, so that each side might be able to consider the other's position more carefully.

On 16 December 1995, however, we were confronted with the Eritrean forces' attacks against the sovereignty and territorial integrity of the Republic of Yemen and their occupation of Hanish al-Kubra. You cannot but agree that these attacks constitute a threat to international peace and security in this sensitive part of the world and impair the security and safety of international shipping and the international economy in the Red Sea, the lifeline for all the world's economies.

We have perused the contents of the letter addressed to you on 20 December 1995 by the Eritrean Minister for Foreign Affairs, Mr. Petros Solomon. We are alarmed by the misleading version he gives of his statements at the Sana'a negotiations: all that happened there was what we have described in this letter. As to the positions of the two sides at the Asmara talks, I attach for your information a copy of the Yemeni side's written submission and two copies of submissions by the Eritrean side, the first being what was submitted before the Eritrean side saw the Yemeni draft and the second its submission afterwards. You will be able to ascertain from the copies of the

two Eritrean submissions that they were not, as they claim, discussing the Yemeni island of Hanish, or even the Hanish archipelago, but instead a string of Yemeni islands running, as they stated, from the Abu Ali islands north of Zuqur as far as the Hikul islands, including the archipelagos of Hanish al-Sughra and Hanish al-Kubra.

With regard to the incidents of military action mentioned in the letter from the Eritrean Minister, the inconsistency of the Eritrean claims will be quite clear from the communiqué issued by Eritrea's Ministry of Foreign Affairs on 19 December 1995. You will see that the Eritrean forces had been prepared to attack and occupy the Yemeni island of Hanish al-Kubra since 15 December 1995 when reconnaissance forces reached the island of Siyul Hanish, near Hanish al-Kubra. The forces then launched the attack on the morning of 16 December. The Eritrean forces were not on the island on 15 December, as claimed by the Minister in his letter and in his Ministry's communiqué of 19 December.

In conclusion, we are quite sure you have followed the reactions to Eritrea's brutal aggression against my country from many of the world's States, from the United Nations, as voiced by the Secretary-General, Mr. Boutros Boutros-Ghali, from the Organization of the Islamic Conference, represented by its Secretary-General, Mr. Hamid Algabid, and from Mr. Ahmad Esmat Abd al-Meguid, Secretary-General of the League of Arab States. In transmitting to you this distressful picture of what Eritrea has done, we request that you kindly convey the facts to all States members of your esteemed organization in order that they may adopt the positive attitudes required of them as members of the international community: it behoves them to preserve international peace and security, to observe the principles of good faith and good-neighbourliness in the conduct of relations between States and to comply with their obligations, under the Charter of the United Nations, the charter of your regional organization and the established principles of international law, to help preserve such international peace and security. We also call upon Eritrea to release the Yemeni prisoners, to return the remains of those who were martyred, to withdraw from the island and to begin immediate direct negotiations with a view to reaching a comprehensive settlement of the entire maritime boundary between the two countries. It should do this in order to defuse any possible conflict, so that the two neighbouring States may fulfil their duties to their respective peoples and participate actively in exploiting the strategic location with which they are favoured to ensure regional security and stability and to strengthen international peace and security.

In bringing this case to your esteemed organization, the Republic of Yemen - while assuring your organization and all fraternal African States of its willingness to negotiate on the subject of Eritrea's claims and to achieve a just, comprehensive and peaceful settlement of the entire maritime boundary between it and Eritrea - calls upon Eritrea to bear the full consequences of its acts of hostility against Yemen. It also reserves its right to defend its national sovereignty and territorial integrity against any aggression. It affirms that it will not fail to press its substantiated historical rights to sovereignty over Hanish al-Kubra and the other Yemeni islands in the Red Sea. At the same time, the Government of the Republic of Yemen sternly warns any other party or parties against the dangers of any intervention or interventions in this dispute. The Yemeni Government continues to believe that the dispute

can be solved by peaceful means through direct dialogue between the two neighbouring countries, with the support of all friendly and fraternal States to both Yemen and Eritrea.